

State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
December 11, 2012
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9:00 A.M.

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**State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of December 11, 2012**

BOARD MEMBERS PRESENT

Gary R. Hatfield, M.D, Chairman
Maroulla Gleaton, M.D., Board Secretary
David R. Andrews, M.D.
Louisa Barnhart, M.D.
Cheryl Clukey
David H. Dumont, M.D
Dana Dyer
David D. Jones, M.D.
David Nyberg, Ph.D.

BOARD STAFF PRESENT

Randal C. Manning, Executive Director
Mark C. Cooper, M.D., Medical Director
Jean M. Greenwood, Administrative Assistant
Dan Sprague, Assistant Executive Director
Tim Terranova, Consumer Assistant
Maria MacDonald, Board Investigator

ATTORNEY GENERAL'S OFFICE

Dennis Smith, Assistant Attorney General
Detective James Gioia

Dr. Nyberg and Ms. Clukey were excused at 4:45 p.m.

The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S. § 1711-C). The Board moved, seconded, and voted the following executive session times. During the public session of the meeting, actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

PUBLIC SESSIONS

9:06 a.m. – 9:11 a.m.	Call to Order
10:52 a.m. – 11:02 a.m.	Recess
11:02 a.m. – 11:05 a.m.	Public Session
12:41 p.m. – 12:45 p.m.	Public Session
12:45 p.m. – 1:13 p.m.	Noon Recess
2:28 p.m. – 2:29 p.m.	Public Session
2:29 p.m. – 2:43 p.m.	Recess
2:43 p.m. – 2:44 p.m.	Public Session
4:10 p.m. – 5:16 p.m.	Public Session - Adjournment

PURPOSE

EXECUTIVE SESSION

9:11 a.m. – 10:52 a.m.	Reviewing Complaints
11:05 a.m. – 12:41 p.m.	Informal Conference
1:13 p.m. – 2:28 p.m.	Informal Conference
2:44 p.m. – 4:10 p.m.	Reviewing Complaints

9:00 A.M.

I. Call to Order

A. Amendments to Agenda

1. Remarks of Assistant Attorney General - Michalowski Law Court Decision

B. Scheduled Agenda Items

Informal Conferences

1. CR 12-34 (11:00 a.m.)
2. CR 12-73 (1:00 p.m.)

Executive Session

II. Complaints

1. Letters of Guidance

a. CR11-438 James W. Ross, M.D.

Dr. Andrews moved to approve the letter of guidance to Dr. Ross with an amendment. Dr. Jones seconded the motion, which passed 7-0-0-1 with Mr. Dyer recused.

b. CR12-76 Bruce G. Manly, P.A.-C.

Dr. Jones moved to approve the letter of guidance to Mr. Manly. Dr. Dumont seconded the motion, which passed unanimously.

c. CR12-96 Robert A. Sylvester, M.D.

Ms. Clukey moved to approve the letter of guidance to Dr. Sylvester. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

2. CR 12-135

Dr. Jones moved to dismiss CR 12-135. Dr. Andrews seconded the motion, which passed unanimously

The complainant states that his pain from a pinched nerve was not treated appropriately, he was not given a muscle relaxer, and he was not physically shown how to do prescribed stretches by the facilities nursing staff. Review of the record does not substantiate his complaint. His pain needs were addressed; he had good relief from ibuprofen by his own admission, he had no documented pinched nerve and no documented need for a muscle relaxer. He was also given written and verbal information on stretching, but these stretches were not physically demonstrated by the nurses as this was felt unnecessary and inappropriate.

3. CR 12-88 Scott Davis, M.D.

Dr. Dumont moved to dismiss CR 12-88 Scott Davis, M.D. with a letter of guidance. Dr. Jones seconded the motion, which passed unanimously

This complaint is against a medical specialist who did not allow a spouse to accompany a patient during her initial history and exam. In addition, no chaperone was offered for intrusive questioning and the subsequent physical exam despite the physician knowing the patient had issues with previous physical and sexual abuse. The complaint also alleges inappropriate prescribing of Suboxone and inappropriate response to side effects although the record does not verify this.

The physician admits that his initial interpersonal actions with the patient could have been better handled. He states he now offers to have a chaperone present and reassures the BOLIM that his practice has changed based on this experience. A Letter of Guidance will be given emphasizing that it is strongly advisable to offer a chaperone during any history and/or exam which may be perceived by the patient as being either emotionally or physically intrusive.

4. CR 12-50

Dr. Dumont moved to investigate further CR 12-50. Dr. Jones seconded the motion, which passed unanimously.

5. CR 12-136

Dr. Jones moved to dismiss CR 12-136. Dr. Nyberg seconded the motion, which passed unanimously.

This complaint addresses the physician's behavior surrounding the prescribing of narcotics. The complaint raises valid concerns about the ability, knowledge, and skill of this physician in the care of chronic pain patients. This complaint actually precedes a review of this physician's narcotic prescribing that resulted in a consent agreement that has restricted this physician's ability to prescribe narcotics, stimulants, and benzodiazepines. The merit of this complaint is not questioned but the complaint is dismissed as the behavior of the physician has already been addressed by a discipline and the restriction of his license.

6. CR 12-192

Dr. Barnhart moved to dismiss CR 12-192. Dr. Gleaton seconded the motion, which passed 8-1-0-0

A patient complains this physician created obstacles to care. There are concerns about the doctor's skepticism about an established diagnosis, access to the doctor, and lack of effective collaborative care. The patient complains about being prescribed a medication when she had previously had a reaction to the medication. The patient expected the doctor to respond differently to symptoms in the session.

The physician describes appropriately reviewing alternative diagnoses. The physician explains the office policy of access with pager backup for emergencies. The physician

prefers not to do routine medication dosage adjustments by phone on an urgent basis as the patient requested. Frequent appointments were offered. Collaborative care was partially achieved. The physician describes careful titration of the medication which ultimately was associated with adverse symptoms which the physician addressed.

The physician expresses disappointment that the requests of this patient could not be met, and describes the management of the patient's symptoms in the interactions. This physician feels that the relationship was not a good fit. The patient does not allow the medical records to be reviewed so the board cannot further comment on the quality of the care provided.

7. CR 12-150 Janice M. Wnek, M.D.

Mr. Dyer moved to dismiss CR 12-150 Janice M. Wnek, M.D. with a letter of guidance. The motion passed 8-1-0-0.

This case involves an infant born 1/15/10. The complaint is that during follow up office visits over the next 11 days after the child was born this Doctor failed to determine the infant was suffering child abuse from her mother.

The medical record has the following data:

During an office visit on 1-19-10, Physician notes record "bruising of face, large caput on high parietal area...soft, bruise over right brow star shaped". The Doctor felt these observations were reasonably associated with the birth of the child.

During an office visit on 1-26-10, Medical Assistant notes record "bruising of cheeks and around left eye, large cephalhematoma right parietal". There are no notes evaluating these findings.

During an emergency room visit 2/5/10 this infant is evaluated with: fractured left humerus, healing left clavicular fracture (thought to be birth trauma), multiple rib fractures (acute appearing right first rib with 6 healing fractures of the left posteromedial ribs) , and subtle findings of cranial bleeding.

The infant did not receive the proper standard of care. The Doctor states this has never happened before during a forty-year career as a physician. Statements from the Doctor indicate complete understanding of the need to recognize and report to DHHS any evidence of child abuse. It is obvious this incident has caused great distress to this Doctor.

Dismiss with letter of guidance.

1. Encourage and increase communication between the Doctor and Medical Assistant so individual concerns and observations are mutually examined and discussed.
2. Insure there is adequate review of patient medical records before and after each patient encounter.

8. CR 12-20/12-222 Myra Altman, M.D.

[SEE APPENDIX A ATTACHED]

Dr. Nyberg moved to approve a Consent Agreement for immediate surrender of license in the matter of CR 12-20/12-222 Myra Altman, M.D. Dr. Gleaton seconded the motion, which passed unanimously.

9. CR 12-44

Dr. Barnhart moved to investigate further and order a 3286 in the matter of CR 12-44. Dr. Jones seconded the motion which passed 8-0-0-1 with Dr. Hatfield recused.

10. CR 12-59

Dr. Barnhart moved to investigate further and order a 3286 in the matter of CR 12-59. Dr. Jones seconded the motion which passed 8-0-0-1 with Dr. Hatfield recused.

11. CR 12-172

Dr. Dumont moved to investigate further CR 12-172. Dr. Jones seconded the motion which passed 8-0-0-1 with Dr. Andrews recused.

12. CR 11-511

Dr. Hatfield moved to investigate further CR 11-511 and reorder a 3286 exam with particular attention to matters of medical judgment, professional behavior, boundary issues, and to include an independent outside chart review. Dr. Dumont seconded the motion, which passed unanimously.

13. CR 12-24

Dr. Hatfield moved to investigate further CR 12-24 and reorder a 3286 exam with particular attention to matters of medical judgment, professional behavior, boundary issues, and to include an independent outside chart review. Dr. Gleaton seconded the motion, which passed unanimously.

14. CR 12-129

Dr. Jones moved to dismiss CR 12-129. Dr. Dumont seconded the motion, which passed unanimously.

This patient was seen in an emergency department after a fall injuring her right hand/wrist. She states that she was in severe pain prior to, during, and after her emergency room visit. She feels that her pain was not validated or appropriately addressed and that a fracture was missed. Two weeks later at a follow up appointment with her chiropractor, and then her PCP, she was told she has a fracture, not a sprain, and that she needed to see an orthopedic surgeon. In his response to the complaint, the

emergency room physician assistant (PA) reviewed the patients care, length of stay and discharge instructions that he gave her, and explains why he felt her care was appropriate. The PA read the x-ray of her hand and wrist as normal, as did the radiologist who read the x-ray the following day, but instructed the patient to follow up with her PCP in a week and to get another x-ray if not improving. He did give her pain medicine to take when she did not need to drive. He put an ace bandage on her wrist. Upon review of the record, the Board agrees that her care was appropriate, but also agrees with the physician assistant that, in the future, immediate attention to analgesia and splinting in patients with pain is important.

15. CR 12-130

Dr. Jones moved to dismiss CR 12-130. Dr. Gleaton seconded the motion, which passed unanimously.

The complainant alleges that the radiologist misread her radiograph and missed her fractured radius, and therefore is partially responsible for her subsequent pain and disability. Review of the chart finds there were discharge instructions from the emergency department concerning the need to re-x-ray her wrist in 1 week if her symptoms were not improving. The patient's care is appropriate.

16. CR 12-138

Dr. Jones moved to dismiss CR 12-138. Dr. Gleaton seconded the motion, which passed unanimously.

There are three separate components to this complaint. The first is that the physician assistant immunized the daughter of the complainant, who was in foster care, against the complainant's wishes. There is some confusion with the child being in foster care, the mother retaining maternal rights, and DHHS having ultimate decision-making ability. Review of the record and further investigation involving the physician assistant and DHHS supports the action taken by the physician assistant. The second component of the complaint is that the physician assistant did not write a note for the complainant to receive a deposit from DHHS for a new apartment. Review the record supports the physician assistant's decision not to write this note. The third component of the complaint is that the physician assistant should have reported the child's yeast infection to DHHS. Yeast infections are not a reportable event/condition for foster children to DHHS.

17. CR 12-144

Ms. Clukey moved to investigate further CR 12-144. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Andrews recused.

18. CR 12-147

Ms. Clukey moved to dismiss CR 12-147. Dr. Gleaton seconded the motion, which passed 8-0-0-1 with Dr. Dumont recused.

The complainant alleges the physician is using his position as a physician to influence a custody dispute between the complainant and her ex-husband, the physician's brother. The case is a family dispute and is not in the purview of the Board.

19. CR 12-166

Dr. Barnhart moved to dismiss CR 12-166. Dr. Andrews seconded the motion, which passed 8-0-0-1 with Dr. Nyberg recused.

This patient complains the doctor advised over the counter medications and that this doctor did not follow up on a letter from a specialist.

A review of the chart reveals the reveals standard care was met for this patient. Successful referral was made for collaborative care which could follow up several health concerns including the specialist's letter. Evidence of review of these records is in the notes of the doctor.

This case is dismissed because the care was appropriate.

20. CR 12-167

Dr. Barnhart moved to dismiss CR 12-167. Dr. Andrews seconded the motion, which passed 8-0-0-1 with Dr. Nyberg recused.

A Patient complains that his doctor lied and jerked him around. The chart documents attentive care, community coordination, and referral to additional collaborative care. The chart documents improvement with the treatment that was provided.

The care appears to be of excellent quality for a difficult period of the illness. This complaint is not substantiated by the record.

21. CR 12-174

Dr. Jones moved to hold an Informal Conference in the matter of CR 12-174. Dr. Nyberg seconded the motion, which passed 8-0-0-1 with Dr. Gleaton recused.

22. CR 12-175

Dr. Jones moved to hold an Informal Conference in the matter of CR 12-175. Dr. Nyberg seconded the motion, which passed 8-0-0-1 with Dr. Gleaton recused.

23. CR 12-176

Dr. Jones moved to investigate further CR 12-176. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Gleaton recused.

24. CR 12-177

Dr. Jones moved to investigate further CR 12-177. Mr. Dyer seconded the motion, which passed 8-0-0-1 with Dr. Dumont recused.

25. CR 12-178

Dr. Jones moved to offer a Consent Agreement in the matter of CR 12-178 to include a reprimand and a fine of \$1000. Dr. Nyberg seconded the motion, which passed 6-2-0-1 with Dr. Dumont recused

26. CR 12-179

Dr. Jones moved to offer a Consent Agreement in the matter of CR 12-179 to include a reprimand and a fine of \$1000. Dr. Nyberg seconded the motion, which passed 6-2-0-1 with Dr. Dumont recused

27. CR 12-182

Dr. Gleaton moved to dismiss CR 12-182. Dr. Nyberg seconded the motion, which passed unanimously.

A patient complained that her new primary care physician did not report the results of her thyroid testing in a timely fashion. Review of the records indicates minor delay due to a holiday, miscommunication in reporting results between the hospital and physician office and the primary care physician being out of the office for three days. The frustrated patient demanded her records and sought other care before further referral could be made. The primary care physician apologized to the patient for the unfortunate delays and has worked to improve the hospital-physician reporting communications.

28. CR 12-184

Dr. Gleaton moved to investigate further CR 12-184. Dr. Jones seconded the motion, which passed 8-1-0-0.

29. CR 12-183

Dr. Andrews moved to dismiss CR 12-183. Dr. Dumont seconded the motion, which passed unanimously.

The complainant alleges inadequate care of her child's diabetic emergency prior to transfer to the child's diabetic center, with whom the physician consulted. The physician

responds that the condition was managed appropriately and that he followed the telephone recommendations of the diabetic consultant. Record review showed there to have been appropriate management of the medical condition. Although there was some opportunity for better communication between the physician and consultant, this was a shared responsibility, and patient's safety was not seriously jeopardized.

30. CR 12-194

Ms. Clukey moved to dismiss CR 12-194. Dr. Jones seconded the motion, which passed unanimously.

The patient alleges her husband, a chronic pain patient, was treated unprofessionally by this physician and his staff. She also complains her husband's chronic pain was not taken seriously. Her husband complained of severe shoulder pain, went directly to the physician's office, and asked to be seen. Her husband was seen within an hour and was x-rayed. The patient was told to call back in the afternoon to get the results. The patient called the office several times that day, as told, but was unable to get the x-ray result or talk with medical staff. When he called back and he was told to call back in the morning for results. When he called back in the morning he was told his result was at the top of the physician's "to do" list. At noon, the patient went to the ER to get relief from his shoulder pain. The patient was called in the afternoon and told a referral had been made to an orthopedic specialist. The physician responds that he has served this patient for more than three years. He states this patient was seen within one hour of arriving at the office and a referral to an orthopedic specialist was made within 24 hours. The physician discussed the complaint with the patient directly, and was told he did not know his wife had filed a complaint and that he had no complaints about the medical care he received. The medical records are thorough, detailed and reflect appropriate and good care of this patient. The physician dismissed this patient and his wife from his practice as this complaint irreparably broke the trust necessary for a successful patient/physician relationship.

31. CR 12-200

Dr. Barnhart moved to investigate further CR 12-200. Dr. Nyberg seconded the motion, which passed unanimously.

32. CR 12-204

Dr. Jones moved to dismiss CR 12-204. Dr. Andrews seconded the motion, which passed 5-2-0-2 with Dr. Dumont and Dr. Barnhart recused.

The complaint against this physician assistant is based on his signing blank prescriptions for his MA that were later used illegally to obtain narcotics. The physician assistant thought he was signing these for later use for patients. This provider now fully understands the risks and possible repercussions of this action. He has already been

sanctioned by his employer; he has surrendered his Schedule 2 prescribing privileges, and has a new plan of supervision in place. No further action by the Board is necessary.

33. Intentionally Left Blank

III. Assessment & Direction

34. AD12-199 (CR12-233)

Ms. Clukey moved to issue a complaint in the matter of AD12-199 (CR12-233). Dr. Jones seconded the motion, which passed unanimously.

35. AD12-226 (CR 12-234)

Dr. Jones moved to issue a complaint in the matter of AD12-226 (CR 12-234). Dr. Dumont seconded the motion, which passed unanimously.

36. AD12-210 (CR 12-235)

Dr. Barnhart moved to issue a complaint in the matter of AD12-210 (CR 12-235). Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

37. AD12-214

Dr. Jones moved to table AD12-214. Dr. Gleaton seconded the motion, which passed unanimously.

38. AD12-216

Dr. Jones moved to file AD12-216. Dr. Andrews seconded the motion, which passed unanimously.

39. AD12-227 (CR12-236)

Dr. Andrews moved to issue a complaint in the matter of AD12-216 (CR12-236). Mr. Dyer seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

40. Intentionally Left Blank

41. Complaint Status Report (FYI)

42. Consumer Assistant Feedback (FYI)

43. Physician Feedback (FYI)

IV. Informal Conference

A. CR 12-34

Dr. Barnhart moved to table CR 12-34 requesting a voluntary evaluation by specialized personnel. Dr. Gleaton seconded the motion, which passed unanimously.

B. CR 12-73

By voluntary agreement with the physician, Mr. Dyer moved to table CR 12-73 with a complete review of the physician's records at the end of six months to verify that changes have taken place. The physician has agreed to take a Continuing Medical Education Course for appropriate medications and dosage levels and a 12-hour AMA approved course. He has agreed to employ full application of universal precautions. Dr. Jones seconded the motion, which passed unanimously.

Noon Meal

Public Session

V. Minutes of November 13, 2012

Dr. Gleaton moved to approve the minutes of November 13, 2012. Dr. Jones seconded the motion, which passed 7-0-2-0 with Dr. Gleaton and Dr. Barnhart abstaining as they were not present for the meeting.

VI. Board Orders & Consent Agreement Monitoring & Approval

A. Board Orders (None)

B. Consent Agreement Monitoring and Approval

1. David Breer, M.D. Consent Agreement Approval. [SEE APPENDIX B ATTACHED]

Dr. Dumont moved to approve the Consent Agreement for a conditioned license in the matter of David Breer, M.D. and to approve Robert Croswell, M.D. as his workplace monitor. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Barnhart recused.

2. Daniel Bobker, M.D.

Dr. Bobker is asking the Board to decrease his urine testing to twice per month, to decrease his meetings with Dr. Publicker to once every three months, and be allowed to take call up to three nights per month.

Dr. Barnhart moved to approve Dr. Bobker's requests to decrease his urine testing to twice per month, to decrease his meetings with Dr. Publicker to once every three months, and be allowed to take call up to three nights per month. Dr. Andrews seconded the motion, which passed 8-0-0-1 with Dr. Hatfield recused.

3. Alexandria Nesbit, P.A.

Mr. Nesbit's Consent Agreement requires that her primary care physician (PCP) send reports to the Board quarterly. Mr. Nesbit is requesting that the reports be done yearly.

Dr. Jones moved to deny Ms. Nesbit's request for reports from her PCP be done yearly. Dr. Dumont seconded the motion which passed 7-0-0-0.

4. CR 12-20/12-222 Myra Altman, M.D. Consent Agreement (Addressed earlier in the meeting.

5. William Tiemann, M.D. (See minutes of November 12, 2012, Section VI (B) (2)
[SEE APPENDIX C ATTACHED]

VII. Adjudicatory Hearing CR 11-139 Matthew Jacobsen, M.D. (Continuance Granted by Hearing Officer J. Smith, Esq.)

VIII. Remarks of Chairman (None)

IX. Executive Director's Monthly Report

The Board accepted the report of the Executive Director.

Mr. Manning reminded the Board that Dr. Hatfield's term on the Board will be up June 30, 2013 and he will not request reappointment.

Mr. Manning reported with sadness the resignation of Investigator Maria MacDonald on December 6, effective December 30, 2012. Ms. MacDonald will become the Medicolegal Death Investigator at the Office of the Chief Medical Examiner (OCME). Ms. MacDonald will attend the January 8, 2013 of the Board.

A. Complaint Status Report (FYI)

B. Policy Review- Puerto Rico Medical Examination

Dr. Jones moved to reaffirm the Puerto Rico Medical Examination policy. Dr. Dumont seconded the motion, which passed unanimously.

C. FSMB Innovation in Licensing Workgroup

Mr. Manning plans to travel to Texas for the meeting for the Licensing Workgroup January 16 to 17, 2013. The FSMB would like one Board member to attend as well.

X. Medical Director's Report (None)

XI. Remarks of Assistant Attorney General

1. Ellen Michalowski v. Board of Licensure in Medicine Court Decision

[See APPENDIX D ATTACHED]

AAG Smith summarized the decision of the Maine Supreme Judicial Court in this matter.

XII Secretary's Report

A. List A

1. M.D. List A Licenses for Ratification

Dr. Jones moved to ratify approval of the Physicians on List A (1) for licensure. Dr. Barnhart seconded the motion, which passed unanimously.

The following M.D. Physician license applications have been approved by staff and Board Secretary Maroulla Gleaton, M.D., without reservation:

NAME	SPECIALTY	LOCATION
Carpenter, Robert G.	Internal Medicine	Not Listed
Chou, Joseph Hsin-I	Neonatal-Perinatal Medicine	Not Listed
Dodson, Brian D.	Gastroenterology	Brunswick
Gellis, Janice E.	Gastroenterology	Lewiston
Horan, William J.	General Surgery	Not Listed
Johnson, Jonathan M.	Neurology	Not Listed
Kuhar, Matthew J.	Dermatopathology	Not Listed
Lampert, Barbara J.	Psychiatry	Not Listed
Minasi, John S.	General Surgery	Rumford
Morgan, Alison E.	Neurology	Not Listed
Palencar, Andrea	Family Medicine	Not Listed
Rieger, Dean P.	Public Health	Windham
Salsbury, Thomas L.	Orthopedic Surgery	Not Listed
Smith, Wiley J.	Dermatology	Not Listed
Soultanakis, Emmanuel N.	OB/GYN	Not Listed
Wagner, Bradford S.	Family Medicine	Portland
Weingard, Herbert B.	Family Medicine	Skowhegan
Whittemore, Douglas M.	Urology	Not Listed
Wikert, Gary A.	Urology	Presque Isle

2. P.A. List A Licenses for Ratification

Dr. Jones moved to ratify approval of the Physician Assistants on List A (2) for licensure. Dr. Dumont seconded the motion, which passed unanimously.

The following Physician Assistant license applications have been approved by Board Secretary Maroulla Gleaton, M.D., without reservations:

NAME	LICENSE	PSP	LOCATION
David Ghiorse, P.A.-C	Inactive	None	None
Jason Trenkle, P.A.-C	Active	Paul Vom Eigen, M.D.	Bangor
Leah Valliere, P.A.-C	Inactive	None	None

B. List B Applications for Individual Consideration

1. Maxime J. Coles, M.D.

The Licensure Committee moved to approve the license application of Maxime J. Coles, M.D. The motion passed unanimously.

2. Gregg A. Valenzuela, M.D.

The Licensure Committee moved to approve the license application of Gregg A. Valenzuela, M.D. The motion passed unanimously.

3. Supriya Gupta, M.D.

The Licensure Committee moved to approve the license application of Supriya Gupta, M.D. The motion passed unanimously.

4. Youmna Abdulhadi, M.D.

The Licensure Committee moved to approve the license application of Youmna Abdulhadi, M.D. The motion passed unanimously.

5. Intentionally Left Blank

6. Intentionally Left Blank

7. Intentionally Left Blank

C. List C Applications for Reinstatement

1. List C Applications for Reinstatement (None)

2. List C Applications for Reinstatement for Individual Consideration

a. Arvind Garewal, M.D. (Tabled)

D. List D Withdrawals

1. List D (1) Withdraw License Application (None)

2. List D (2) Withdraw License from Registration

Dr. Jones moved to approve the licensees on List D (2) to withdraw their licenses from registration. Mr. Dyer seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration.

<u>NAME</u>	<u>LICENSE NO.</u>
Burke, Dennis	MD18685
Civic, David	MD14654
Converse, Thomas	MD12749
Jo, Sunila	MD17194
Siddiqui, Shahida	MD8859
Simson, Michael	MD16597
Tice, Paul	MD18281

3. List D (3) Withdraw License from Registration - Individual Consideration (None)
Younna Abdulhadi, M.D.

E. List E Licenses to lapse by operation of law (FYI)

The following physician licenses lapsed by operation of law effective November 21, 2012.

<u>NAME</u>	<u>LICENSE NO.</u>
Banerjee, Anita	MD17377
Bhat, Shyam K.	MD18486
Braylan, Raul	MD18018
Ciampi, Louis	MD5109
Drapeau, Marc	MD17381
Frank, Steven	MD18450
Ganeshan, Deepa	MD17942
Grimes, Gilbert	MD5407
Iqbal, Azhar	MD18865
Javery, Shahid	MD18514
Johnson, Charles	MD8048
Kasinath, Nagesha	MD16138
Loiselle, Andre	MD11663
McCarty, Gale	MD18159
McLaughlin, Timothy	MD18395
Nielson, Peter	MD16561
Patel, Alpen	MD18453
Peer, Christopher	MD16749
Sadio, Sonita	MD17984
Sarraf, Chady	MD18204
Solano, Simon	MD17567

Tam, Yiu-Wing
Vaddineni, Sarat

MD8871
MD18611

F. List F Licensees requesting to convert to active status (None)

G. List G Renewal applications for review

1. Russell James, M.D. (Tabled)

2. Preethi K. Venepalli, M.D.

The Licensure Committee moved to table pending a 3286 exam. The motion passed unanimously.

3. Oyeibisi S. Aremu, M.D.

The Licensure Committee moved to grant renewal for Oyeibisi A. Aremu, M.D. The motion passed unanimously.

H. List H. Physician Assistant Schedule II Authority Requests for Ratification

1. Applications to Renew Schedule II Authority

2. Applications for New Schedule II Authority

Dr. Jones moved to ratify the Physician Assistants on List H(2) for new Schedule II prescribing authority. Mr. Dyer seconded the motion, which passed unanimously.

The following new requests for Schedule II prescribing authority have been approved by the Board Secretary Maroulla Gleaton, M.D.

NAME	PSP	LOCATION
Timothy Canham, P.A.-C	Thomas Hayward, M.D.	Bangor
Danielle Doyon, P.A.-C	Thomas Hayward, M.D.	Bangor
Edith Konesni, P.A.-C	Benjamin Mailloux, M.D.	Brooks
Greg Schimmack, P.A.-C	Paul Weldner, M.D.	Portland

XIII. Standing Committee Reports

A. Administration, Policy & Rules Committee

B. Physician Assistant Advisory Committee

1. Nomination of Committee Members

Dr. Dumont moved to appoint UNE Medical Director, Dr. Judith Chamberlain as an ex officio member of the PA Committee. Dr. Gleaton seconded the motion, which passed unanimously.

XIV. Board Correspondence (FYI)

XV. FYI

XVI. FSMB Material

XVII. Other Business (Nov Update to MMA Chronic Pain Project (FYI)

XVIII. Adjournment 5:30 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Jean M. Greenwood".

Jean M. Greenwood
Administrative Assistant
Board Coordinator

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT AGREEMENT FOR
Myra Altman, M.D.)	SURRENDER OF LICENSE
CR12-20/CR12-222)	

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice as a physician in the State of Maine held by Myra Altman, M.D. The parties to the Consent Agreement are: Myra Altman, M.D. ("Dr. Altman"), the State of Maine Board of Licensure in Medicine ("the Board"), and the State of Maine Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. At all times relevant to the complaint, Dr. Altman was a licensee of the Board. The Board first issued Dr. Altman a medical license on June 20, 1986. Dr. Altman specializes in Internal Medicine and Nephrology.

2. On January 9, 2012, the Board received information from Dialysis Clinic, Inc. (DCI), a Non-Profit Corporation located in Nashville, Tennessee that operates a dialysis clinic in Belfast, Maine that it had permanently suspended the clinical privileges of Dr. Altman for her failure to provide coverage for patients. On January 27, 2012, the Board received further correspondence from DCI clarifying the basis for its suspension of Dr. Altman's privileges: more specifically, that Dr. Altman had: failed to meet the ESRD Conditions for Coverage (42 CFR § 494.90) and DCI medical Staff Bylaws requirements as related to observing and treating her patients; failed to ensure adequate back-

up coverage so that her patients would have uninterrupted access to care per DCI's Medical Staff Bylaws; and failed to request a hearing with DCI regarding these issues.

3. On February 14, 2012, the Board reviewed the information from DCI and voted to initiate a complaint against Dr. Altman's Maine medical license. The Board docketed the complaint as Complaint CR12-20 and sent it to Dr. Altman for a response.

4. On March 6, 2012, the Board received a response from Dr. Altman to Complaint CR12-20. According to Dr. Altman, she was an inpatient at a hospital in Bangor from the end of May until the end of June 2011, when she was transferred to an out-of-state hospital until the end of July 2011. According to Dr. Altman, she was subsequently released from the hospital but "was not released by [her] physician to return to [her] job duties until the end of September 2011." According to Dr. Altman, during her hospitalization and absence from work, her dialysis patients were covered and seen on a weekly basis by another physician nephrologist. Dr. Altman alleged that she was in regular contact with DCI and the covering physician during her hospitalization and after her return home, and that she resigned her position as Medical Director for DCI because it was obvious to her that she "would not be able to continue in that capacity." In her response, Dr. Altman did not disclose the reason for her hospitalization from the end of May to the end of July 2011, or the reason that her physician would not release her to perform her duties as a physician until September 2011.

5. On March 9, 2012, the Board's investigator spoke with Dr. Altman regarding her response to Complaint CR12-20. In particular, the Board's investigator asked Dr. Altman the reason for her hospitalization from May to July 2011. According to the Board's investigator, Dr. Altman stated that:

she did not feel that was what the issue was and then told [the investigator] that they never truly discovered what the problem was... they do not know if the issue was viral or a reaction to something, but she was very ill... she is doing better now and is healthier than she has ever been.

6. On April 10, 2012, the Board reviewed Complaint CR12-20, including Dr. Altman's response and all investigative information, and voted to further investigate the matter. More specifically, the Board voted to request additional information from Dr. Altman, including information regarding her hospitalization from May to July 2011.

7. On May 3, 2012, the Board's investigator contacted the physician identified by Dr. Altman as the physician nephrologist who was covering for her during her hospitalization from May to July 2011. According to the physician, Dr. Altman had asked him earlier in the year to cover for her at DCI for another issue not related to the hospitalization. According to the physician, he did cover for Dr. Altman as the Medical Director for DCI during her hospitalization, and the coverage that he provided was unexpected. In addition, the physician indicated that although he stood in as the Medical Director for DCI, he did not cover Dr. Altman's office patients.

8. On May 17, 2012, the Board's investigator sent Dr. Altman a letter that included the additional questions posed by the Board following its review

on April 30, 2012. In addition to other information, the letter requested further information regarding Dr. Altman's hospitalization from May to July 2012, and specifically included medical releases for Dr. Altman to execute so that the Board could obtain and review her medical records.

9. On August 23, 2012, the Board received a response from Dr. Altman to the Board's request for additional information. In response to the Board's request for additional information regarding her hospitalization from May to July 2011, Dr. Altman replied:

In lieu of releases for my medical records my current treater, Dr. [X], has written to the Board regarding both the fact of my ongoing treatment by him and his opinion about my fitness to practice.

Dr. Altman provided a copy of a letter dated August 13, 2012, sent to her by Dr. X, her attending psychiatrist. According to that letter, Dr. X had been Dr. Altman's attending physician since May 2011, and coordinated her care and provided outpatient mental health care. Although the letter indicated that Dr. X had "performed and reviewed assessments and have made diagnoses," it did not identify the results of the assessments nor the diagnoses. In addition, although the letter indicated that Dr. Altman had received care at other facilities, it did not identify them nor identify the reason for her receiving care. The letter also stated that "it is my professional opinion that you are able to practice medicine within your scope of training and certification without restriction." Finally, the letter included the following:

It is expected that you will continue to be followed in this clinic for medication management on a schedule to which we will agree, and that all mental health medications will be directed, but not necessarily prescribed by this clinic until mutually agreed otherwise.

Other than the foregoing information, Dr. Altman did not provide the Board with any information regarding the reason (i.e. medical basis) for her hospitalization from May to July 2011 or for her physician's decision not to allow her to return to the practice of medicine until September 2011.

10. On October 29, 2012, the Board received a letter from the Maine Medical Association Medical Professionals Health Program (MPHP), with whom Dr. Altman had been enrolled since June 1, 2011. According to that letter, on October 17, 2012, Dr. Altman was admitted to Waldo County General Hospital having overdosed on Ambien, a sleep medication, and that this was her second overdose in a year's time on the same medication. The MPHP letter also indicated that Dr. Altman was subsequently admitted to Acadia Hospital from which she was discharged on October 26, 2012. The MPHP letter further stated that the MPHP had learned that Dr. Altman had been prescribed hydrocodone and that she had been seeing patients in her office near the hospital – neither of which facts she had reported to the MPHP. In addition, the MPHP letter indicated that Dr. Altman had not submitted reports as required, and suspended its contract with her until such time as she is prepared to be compliant with the program. Following its receipt of this

information, the Board staff opened a new investigation regarding Dr. Altman and docketed it as AD12-213.

11. On October 30, 2012, the Board obtained copies of medical records regarding two hospitalizations of Dr. Altman at Waldo County General Hospital: May 23, 2011 and October 17, 2012. According to those medical records:

a. Dr. Altman has a history of major depression and multiple hospital admissions for medication overdoses – one on May 23, 2011 and one on October 17, 2012;

b. Dr. Altman has a history of abusing prescription medications;

c. Dr. Altman has a history of obtaining prescription medications from a supplier of medical devices, equipment and pharmaceuticals;

d. Dr. Altman has a history of self-medicating with prescription medications not specifically provided or prescribed to her by her treating physicians, and which she has obtained for her medical practice from a supplier of medical devices, equipment and pharmaceuticals;

e. A physician at Waldo County General Hospital who treated Dr. Altman opined that after two overdose events that the State seriously consider removing Dr. Altman's medical license.

12. On November 13, 2012, the Board reviewed Complaint No. CR12-20 and AD12-213. Following its review, the Board voted to summarily suspend Dr. Altman's Maine medical license pursuant to 32 M.R.S. § 3282-A(2) and 5

M.R.S. § 10004(3) because it concluded that her continued ability to practice medicine constituted an immediate jeopardy to the health and safety of the public and that failure to immediately suspend her license would not adequately respond to the risk. In addition, the Board voted to initiate a new complaint based upon AD12-213, which it docketed as Complaint No. CR12-222, and voted to schedule Complaint No. CR12-12 and CR12-222 for an adjudicatory hearing on December 11, 2012.

13. This Consent Agreement has been negotiated by and between Emily A. Bloch, Esq., legal counsel for Dr. Altman, and legal counsel for the Board in order to resolve this matter without further proceedings. Absent Dr. Altman's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before November 19, 2012, the Board will conduct a consolidated adjudicatory hearing on December 11, 2012.

14. By signing this Consent Agreement, Dr. Altman waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification on December 11, 2012. Dr. Altman also forever waives any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

In lieu of further investigations and proceedings in this matter, Dr.

Altman agrees to the following:

15. Dr. Altman admits that with regard to Complaint CR12-20 and CR12-222 the Board has evidence from which it could conclude by the preponderance of the evidence that she has engaged in conduct that constitutes grounds for discipline and violations of the following Board statutes:

a. 32 M.R.S. § 3282-A(2)(C) – A professional diagnosis of a mental or physical condition that is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients;

b. 32 M.R.S. § 3282-A(2)(E) – Incompetence by engaging in conduct that evidences a lack of fitness to discharge the duty owed by the licensee to the general public;

c. 32 M.R.S. § 3282-A(2)(F) – Unprofessional conduct by engaging in conduct that violates a standard of professional behavior that has been established in the practice of medicine.

16. As discipline for the conduct described in paragraphs 1-15 above, Dr. Altman agrees to the IMMEDIATE SURRENDER of her Maine medical license effective upon the execution of this Consent Agreement. In complying with this provision, Dr. Altman shall immediately return her Maine medical license to the Board.

17. Nothing in this Consent Agreement shall prohibit Dr. Altman from, at reasonable intervals, petitioning the Board for reinstatement of her Maine

medical license. Upon petitioning the Board for reinstatement, Dr. Altman shall bear the burden of demonstrating that: (a) her Maine medical license should be reinstated; and (b) that the resumption of her practice of medicine would not pose a risk to the public; and (c) that no grounds exist for the Board to deny her application for reinstatement. The Board, upon receipt of any such petition for reinstatement from Dr. Altman, may direct that she undergo whatever testing and evaluations that it deems appropriate. In addition, Dr. Altman shall execute any and all releases so that the Board, Board staff, and Office of Attorney General may obtain copies of her medical, psychological, substance abuse, and counseling records and evaluations. Following its receipt of a petition for reinstatement from Dr. Altman, and its review of any records, evaluations and investigative information, the Board shall retain the sole discretion to: (a) deny the petition; (b) grant the petition; or (c) grant Dr. Altman a license subject to restrictions and/or conditions pursuant to a consent agreement under the authority of 32 M.R.S. § 3282-A(2) and 10 M.R.S. 8003(5). Any decision made by the Board pursuant to this paragraph need not be pursuant to a hearing and is not appealable or reviewable by any Court because this Consent Agreement may only be amended or rescinded by the agreement of all of the parties pursuant to 10 M.R.S. § 8003(5)().

18. Dr. Altman waives her right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Altman agrees that this Consent Agreement and Order is a final order resolving pending Complaint Nos. CR12-20 and CR12-222. This Consent

Agreement is not appealable and is effective until or unless modified or rescinded in writing by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

19. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Altman or any other matter relating to this Consent Agreement.

20. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408. This Consent Agreement constitutes disciplinary action that is reportable to the Federation of State Medical Boards (FSMB), the National Practitioner Data Bank (NPDB), and the Healthcare Integrity and Protection Data Bank (HIPDB).

21. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

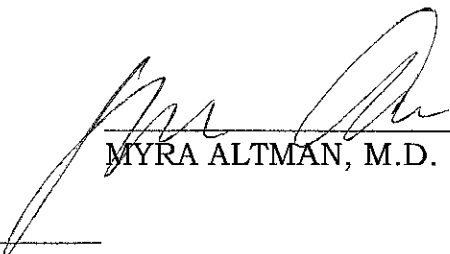
22. Dr. Altman acknowledges by her signature hereto that she has read this Consent Agreement, that she has had an opportunity to consult with an attorney before executing this Consent Agreement, that she executed this Consent Agreement of her own free will and that she agrees to abide by all terms and conditions set forth herein.

23. For the purposes of this Consent Agreement, "execution" means the date on which the final signature is affixed to this Consent Agreement.

I, MYRA ALTMAN, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED:

Nov 16, 2012


MYRA ALTMAN, M.D.

STATE OF _____

_____, S.S.

Personally appeared before me the above-named Myra Altman, M.D., and swore to the truth of the foregoing based upon her own personal knowledge, or upon information and belief, and so far as upon information and belief, she believes it to be true.

DATED:


11/16/12


~~NOTARY PUBLIC~~ / ATTORNEY

MY COMMISSION ENDS:

DATED:

11/16/12


EMILY A. BLOCH, ESQ.
Attorney for Dr. Altman

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

12/10/12


GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED:

12/11/12



DENNIS E. SMITH
Assistant Attorney General

Effective Date:

12/11/12

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

<u>In re:</u>)	CONSENT AGREEMENT FOR
David N. Breer, M.D.)	CONDITIONAL LICENSURE
Application for Reinstatement of)	
Medical Licensure)	

INTRODUCTION

This document is a Consent Agreement For Conditional Licensure, which grants a conditional license to practice medicine in the State of Maine to David N. Breer, M.D. The parties to this Consent Agreement For Conditional Licensure are: David N. Breer, M.D. ("Dr. Breer"), the State of Maine Board of Licensure in Medicine ("the Board"), and the Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 32 M.R.S.A. § 1077 and 10 M.R.S.A. § 8003(5).

FACTS

1. The Board first issued Dr. Breer a license to practice medicine in the State of Maine on July 21, 1992. Dr. Breer specializes in Psychiatry.
2. On November 12, 2002, Dr. Breer entered into a Consent Agreement for Discipline and Modification of License based upon unprofessional conduct for obtaining opiates through inappropriate prescribing practices. The consent agreement converted Dr. Breer's Maine medical license from active to inactive status indefinitely, and included the following conditions in order to convert his license back to active status:
 - a. Demonstration of six (6) months of continuous sobriety by participation in the Physicians Health Program pursuant to a written substance abuse monitoring agreement;

b. Provide authorization to the Board to obtain a summary of treatment and to discuss his treatment with his treating therapist or practitioner.

3. On May 1, 2005, Dr. Breer allowed his Maine medical license to lapse by not filing an application to renew it.

4. On March 26, 2012, the Board received an application from Dr. Breer for the reinstatement of his Maine medical license to active status.

5. On March 27, 2012, the Board received correspondence from the Maine Medical Professionals Health Program (MPHP) confirming that Dr. Breer was an active and continuing participant in that program since January 11, 2012, and that he was being monitored pursuant to a written agreement.

6. On May 8, 2012, the Board reviewed Dr. Breer's application for licensure, and voted to table further action on it pending receipt of information from Dr. Breer's treating therapist, and Dr. Breer's successful passage of the Special Purpose Examination (SPEX) in order to demonstrate his current medical competence.

7. On November 13, 2012, the Board reviewed Dr. Breer's application for licensure, which included:

- a. Documentation from the MPHP demonstrating Dr. Breer's active sobriety for at least six months through a written monitoring contract;
- b. Documentation of his successful passage of the SPEX; and
- c. Documentation regarding Dr. Breer's treatment and on-going therapy, including an opinion that Dr. Breer was fit to return to the active practice of medicine.

Following its review of Dr. Breer's application for licensure, the Board voted to

offer this Consent Agreement for Conditional Licensure to Dr. Breer in order to grant his application for licensure with conditions.

8. Pursuant to Title 32 Chapter 48 the Legislature endowed the Board with the power and duty to regulate the practice of physicians and physician assistants licensed by the Board, including setting standards of practice and investigating complaints. Pursuant to 10 M.R.S. § 8008 the Legislature provided that the sole purpose of the Board is to “protect the public health and welfare” and that “other goals or objectives may not supersede this purpose.”

9. In light of Dr. Breer’s prior conduct and the documentation of his efforts at rehabilitation and abstinence, and in light of the Board’s duty to protect the public, the parties agree to enter in to this Consent Agreement For Conditional Licensure pursuant to the terms and conditions identified below.

COVENANTS

10. The Board agrees to issue and Dr. Breer agrees to accept a Maine medical license pursuant to this Consent Agreement for Conditional Licensure, which shall become effective upon the execution¹ of this document. Until this Consent Agreement is modified or rescinded in writing by all of the parties hereto, Dr. Breer’s license to practice as a physician shall be subject to the following conditions:

a. Abstinence. Dr. Breer shall totally refrain from the use or possession of any and all Prohibited Substances except drugs that are dispensed or prescribed by a single primary care physician or drugs that are dispensed or prescribed under circumstances that constitute a genuine medical or surgical emergency. “Prohibited Substances” as used throughout this Consent Agreement shall mean all controlled substances (i.e. benzodiazepines; sedatives; hypnotics or similar drugs; opiates; cocaine), alcohol, and all mood and/or consciousness or mind-altering substances, whether illicit or not. In the event that the Board or Board staff receives a report of use or possession of

¹ The term “execution” means the date on which the final signature is affixed to this Consent Agreement.

any Prohibited Substance by Dr. Breer, it shall result in the immediate suspension of his Maine medical license, which shall continue to be suspended until the Board holds a hearing on the matter.

b. Enrollment and Successful Participation in the Maine Medical Professionals Health Program. Dr. Breer shall enroll in and fully and successfully participate in the Maine Medical Professionals Health Program (MPHP) pursuant to a written contract approved by the Board. **No later than December 19, 2012**, Dr. Breer shall provide the Board with documentation of his enrollment in and successful participation in the MPHP. Dr. Breer understands and agrees that his written contract with the MPHP must be approved by the Board, and that any changes to his written contract with the MPHP must be approved by the Board. In complying with this provision, Dr. Breer specifically and explicitly waives vis a vis the Board, the Board staff, and the Department of Attorney General any claims of confidentiality regarding: (i) the written contract with the MPHP; (ii) any and all records pertaining to his compliance with his contract with the MPHP; and (iii) any records, including but not limited to substance abuse treatment records and laboratory reports, in the possession of the MPHP regarding Dr. Breer. The MPHP contract must include a condition that Dr. Breer submit to testing or monitoring for the presence of any Prohibited Substances as defined under this Consent Agreement. In complying with this testing or monitoring provision, Dr. Breer agrees to the following:

(i) Immediate, Indefinite, Automatic Suspension for Failure Successfully Participate in the MPHP. Dr. Breer's failure to enroll in and/or successfully participate in the MPHP shall result in the immediate, indefinite, automatic suspension of his Maine medical license, which shall continue until the Board holds a hearing on the matter. At hearing, the Board shall make a determination about whether or not Dr. Breer has enrolled and successfully participated in the MPHP. The suspension shall become effective at the time that Dr. Breer receives actual notice from the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means.

(ii) Testing/Monitoring. Dr. Breer shall undergo such testing of the type (including but not limited to urine, blood, hair or fingernail analysis) as determined by the MPHP² and as frequently and for the duration agreed to in the written contract with the MPHP. Failure to undergo such testing as required by the written contract with the MPHP shall constitute a violation of this Consent Agreement, which shall be immediately reported to the Board within 24 hours by the MPHP, and grounds for the immediate

² The MPHP contract may include a condition that Dr. Breer submit to different types of testing.

suspension of Dr. Breer's Maine medical license pending hearing. The suspension shall become effective at the time that Dr. Breer receives actual notice from the Board that a report of a failure to undergo testing has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means.

(iii) Immediate Report of Positive Test Results. Any test result which indicates any level of a prohibited substance shall be immediately reported by Dr. Breer and the MPHP to the Board in writing within 24 hours after Dr. Breer and the MPHP receive notice of the positive test. Dr. Breer understands that MPHP has a separate duty to report such a positive to the Board pursuant to existing protocols. By way of clarification, immediate reports will not be required if the tests show a positive result for a mood or mind altering drug that is known to the Board and MPHP to be a drug prescribed by Dr. Breer's treatment provider for a medical condition and the levels appear consistent with the quantity and dosage prescribed.

(iv) Retention of Reports. During the term of this Consent Agreement, all original laboratory data and test reports shall be retained by the MPHP until instructed otherwise by the Board.

(v) Rebuttable Presumption and Admission into Evidence of Test Results. It is agreed and understood that a test evidencing the presence of any Prohibited Substance, shall raise a rebuttable presumption that such substance was in fact used by Dr. Breer. Such a positive test result shall alone, including but not limited to any test result showing the presence of ethyl glucuronide, ethyl sulfate, or phosphatidyl ethanol, be sufficient to prove the use of the Prohibited Substance by Dr. Breer. Dr. Breer further agrees that the result of the test shall be admitted into evidence in any proceeding regarding his Maine medical license, whether before the Board or before a Court of competent jurisdiction.

(vi) Accidental Ingestion/Exposure Not a Defense. Dr. Breer is hereby advised and agrees that the ingestion of poppy seeds, mouthwash and over the counter cough or cold medicines or remedies has from time to time been raised as a defense to a positive screen result for morphine, opiates and/or alcohol. For that reason, Dr. Breer agrees to refrain from ingesting poppy seeds in any food substances, mouthwash and over the counter cough or cold medicines or remedies as a condition of this Consent Agreement. In the event that Dr. Breer has a positive screen for morphine, opiates and/or alcohol, Dr. Breer agrees that the ingestion of poppy seeds and/or mouthwash and/or over the counter cough or cold

medicines shall not constitute a defense to such a positive screen. In addition, Dr. Breer is hereby advised that the use of alcohol-based hand sanitizers has from time to time been raised as a defense to a positive screen result for alcohol. For that reason, Dr. Breer agrees to refrain from using alcohol-based hand sanitizers as a condition of this Consent Agreement, and further agrees that in the event of a positive screen for alcohol that the use of an alcohol-based hand sanitizer shall not constitute a defense to such a positive screen.

(vii) Immediate, Indefinite, Automatic Suspension for Positive Test. If any urine or blood test is positive (i.e., in any manner evidences any use of any Prohibited Substance – including a positive result for the presence of ethyl glucuronide, ethyl sulfate, or phosphatidyl ethanol, then the result shall be the immediate, indefinite, automatic suspension of Dr. Breer's Maine medical license, which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Executive Secretary and the Board's assigned Assistant Attorney General, earlier determine that the report is without merit. The suspension shall become effective at the time that Dr. Breer receives actual notice from the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means.

(viii) Board Hearing to Determine if Dr. Breer Used Any Prohibited Substance. After receiving a positive report evidencing use by Dr. Breer of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from Dr. Breer. The Board will hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both Dr. Breer and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedure Act.

(ix) Release. Dr. Breer agrees that by executing this Consent Agreement he waives any and all objections to the Board, Board staff, and the Board's assigned Assistant Attorney General having direct contact with the MPHP, including:

- (a) communicating directly with the MPHP regarding his compliance with that program;
- (b) requesting and obtaining copies of any and all documentation regarding his participation in the MPHP, including any and all medical records, evaluations, and reports of monitors and treatment providers;

(c) physically inspecting the MPHP files regarding Dr. Breer's compliance with the MPHP contract.

c. Waiver of Confidentiality and Release of Records. Dr. Breer agrees and understands that the Board and the Department of Attorney General shall have complete access to his present and future personal medical and counseling records, including: records regarding chemical dependency; recording regarding mental health issues; and to all otherwise confidential data pertaining to treatment or monitoring of Dr. Breer for substance abuse and/or mental health issues either within or outside of the MPHP. Dr. Breer waives any privileges concerning such information, reports, or records, and agrees to execute any and all releases necessary to permit the Board or the Department of Attorney General access to such information. All releases must, in addition to waiving any relevant State law privileges or immunities, provide the Board and the Department of Attorney General with access to all material covered by 42 C.F.R., Part 2. In the event that the releases are not sufficient to obtain access to any information which the Board considers relevant, Dr. Breer agrees to personally obtain such information and furnish it to the Board, to the extent permitted by law.

d. Board-Approved Physician Monitor. Prior to his return to the active practice of medicine, Dr. Breer must have a Board-approved practice monitor who shall monitor his medical practice. In complying with this requirement, Dr. Breer shall submit to the Board for its approval the name of a proposed practice monitor, whom the Board has the sole discretion to approve or deny. The monitoring physician must be in direct contact with Dr. Breer and observe him within his medical practice at least once a week, and inform the Board if Dr. Breer demonstrates any issues with regard to isolation, inappropriate boundaries or decision-making, ability to concentrate, absenteeism, substance abuse, incompetence, unprofessionalism or any other concerns. The monitoring physician shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Breer understands that the monitoring physician will be an agent of the Board pursuant to Title 24 M.R.S. § 2511. Dr. Breer shall permit the monitoring physician full access to his medical practice, including but not limited to all patient information. The Board-approved monitor shall provide the Board with reports regarding Dr. Breer's medical practice every ninety (90) days following the execution of this Consent Agreement. Dr. Breer shall not actively practice medicine until the Board has approved a physician monitor pursuant to this provision. After one (1) year of successful medical practice under this monitoring, Dr. Breer may request that the Board delete this condition of this Consent Agreement. The Board has the sole discretion to grant or deny Dr. Breer's request.

e. Notification to Medical Employer(s)/Potential Medical Employers/Licensing Jurisdictions. Dr. Breer shall provide a copy of this Consent Agreement to any medical employers or potential medical employers, and to any jurisdiction in which he holds or seeks a medical license.

f. Notification of Change of Address/Contact Information. Dr. Breer shall within ten (10) days following the execution of this Consent Agreement provide the Board staff with an address, telephone number and e-mail address by which the Board staff may contact him regarding this Consent Agreement. In addition, Dr. Breer shall provide the Board staff with any changes regarding his address, telephone number and e-mail address within ten (10) days of any such change(s).

11. Violation of any of the terms or conditions of this Consent Agreement by Dr. Breer shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of re-licensure.

12. Pursuant to 10 M.R.S. § 8003(5)(B) the Board and Dr. Breer agree that the Board has the authority to issue an order, following hearing, imposing discipline upon his Maine medical license, including but not limited to modifying or revoking his license in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

13. Dr. Breer waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Breer agrees that this Consent Agreement is a final order. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General. Dr. Breer may file a written request, together with any supporting documentation to modify the terms and conditions of this Consent Agreement. The Board retains the sole discretion to: (a) deny Dr. Breer's request; (b) grant Dr. Breer's request; and/or (c) grant Dr. Breer's request in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Dr. Breer's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

14. The Board and the Attorney General may communicate and cooperate regarding Dr. Breer's practice or any other matter relating to this Consent Agreement.

15. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

16. This Consent Agreement constitutes adverse action and may be reportable to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).

17. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

18. Dr. Breer acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

I, DAVID N. BREER, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT FOR CONDITIONAL LICENSURE AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS CONSENT AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED:

11/23/12



DAVID N. BREER, M.D.

STATE OF Maine
Kennebec, S.S.

Personally appeared before me the above-named David N. Breer, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED:

11-23-12


NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS:

THERESA L. BLISS
Notary Public, Maine

My Commission Expires May 25, 2013

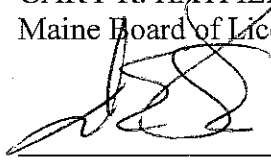
DATED:

12/11/12


GARY R. HATFIELD, Chairman
Maine Board of Licensure in Medicine

DATED:

12/11/12


DENNIS E. SMITH
Assistant Attorney General

Effective Date:

12/11/12

**STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE**

IN RE: William E. Tiemann, M.D. Complaint No. CR07-329))))	TERMINATION OF CONSENT AGREEMENT
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This document terminates a Consent Agreement effective June 10, 2008, which imposed conditions upon the active license to practice medicine in the State of Maine issued to William E. Tiemann, M.D. The parties to that Consent Agreement were: William E. Tiemann, M.D. ("Dr. Tiemann"), the State of Maine Board of Licensure in Medicine ("the Board"), and the Office of the Attorney General (the "Attorney General").

BACKGROUND

1. On June 10, 2008, the parties entered into a Consent Agreement that imposed conditions upon the Maine medical license of Dr. Tiemann. The Consent Agreement was based upon information received from the Federation of State Medical Boards that the Kentucky Board of Medicine had indefinitely restricted Dr. Tiemann's license for poly substance abuse. The Consent Agreement required that Dr. Tiemann: remain abstinent from all prohibited substances; undergo monitoring for prohibited substances; enroll in and successfully participate in the Maine Medical Professionals Health Program (MPHP); undergo counseling; and maintain his Maine medical license so long as the Consent Agreement remained in effect.

2. On September 25, 2012, the Board received a written

request from Dr. Tiemann to terminate the Consent Agreement based upon his full compliance to date and his successful completion of a five-year monitoring contract with the Louisiana Physician's Health Program (PHP). In addition, Dr. Tiemann represented that he no longer practices teleradiology, limits his practice of medicine solely to the State of Louisiana, has no plans to practice outside of Louisiana, and requested to withdraw his Maine medical license.

3. On October 10, 2012, the Board received correspondence from the Maine Medical Professionals Health Program (MPHP), who has been a secondary monitoring body for Dr. Tiemann since 2009. According to the MPHP, Dr. Tiemann has been fully compliant with his contract with the Louisiana PHP, and all screens for prohibited substances were negative.

4. On October 15, 2012, the Board received correspondence from the Louisiana PHP. According to the Louisiana PHP, Dr. Tiemann successfully completed a five-year monitoring contract, which included random drug testing (all results were negative), supportive services and participation in various recovery oriented activities. According to the Louisiana PHP, Dr. Tiemann also signed a one-year post-monitoring contract, which will remain in effect until August 24, 2013. In light of Dr. Tiemann's performance in its program, the Louisiana PHP recommended the reinstatement of his medical license to "full and unrestricted status."

5. On November 13, 2012, the Board reviewed Dr. Tiemann's written request to terminate his Consent Agreement and withdraw his Maine medical license. The Board also reviewed the documentation of his compliance with the Consent Agreement and the letters from the Maine MPHP and the Louisiana PHP. Following its review, the Board voted to grant Dr. Tiemann's request to terminate the Consent Agreement and allow him to withdraw from medical licensure in Maine.

COVENANT

6. Dr. Tiemann, the Board, and the Office of Attorney General hereby agree to terminate the Consent Agreement dated June 8, 2008, which termination shall be effective upon the execution of this document.

7. The term "execution" means the date on which the final signature is affixed to this document.

I, WILLIAM E. TIEMANN, M.D., HAVE READ AND UNDERSTAND THE FOREGOING TERMINATION TO THE CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

Dated:


11/29/12

William E. Tiemann, MD
WILLIAM E. TIEMANN, M.D.

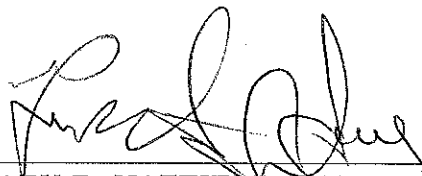
Sworn and subscribed before
me, the Joseph Tiemann,
Notary - Nov 29, 2012
New Orleans, Louisiana

Orleans
Park

STATE OF MAINE
BOARD OF LICENSURE IN
MEDICINE


M. Joseph Tiemann


DATED: 12/11/12



GARY R. HATFIELD, M.D.,
Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED: 12/11/12



DENNIS E. SMITH
Assistant Attorney General

Effective Date: 12/11/12

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2012 ME 134

Docket: Ken-12-47

Argued: September 12, 2012

Decided: December 6, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, GORMAN, and JABAR, JJ.

ELLEN MICHALOWSKI

v.

BOARD OF LICENSURE IN MEDICINE et al.

LEVY, J.

[¶1] Ellen Michalowski appeals from a judgment of the Superior Court (Kennebec County, *Marden, J.*) dismissing her complaint seeking judicial review pursuant to M.R. Civ. P. 80C and relief pursuant to 42 U.S.C.S. § 1983 (LexisNexis 2002), arising from the Board of Licensure in Medicine's decision to revoke her medical license. Michalowski challenges the court's conclusion that (A) it lacked subject matter jurisdiction to review the Board's decision because the District Court has exclusive jurisdiction to review nonconsensual license-revocation orders pursuant to 10 M.R.S. § 8003(5) (2011); and (B) her section 1983 claim should be dismissed because the Board members had authority to revoke her license, and are immune from suit. We affirm the Superior Court's judgment.

I. BACKGROUND

[¶2] Michalowski was first licensed to practice medicine in Maine in 1996. Between 2005 and 2007, Michalowski underwent multiple knee surgeries stemming from a total knee replacement, for which she received narcotic painkillers. Michalowski's subsequent painkiller dependency gave rise to an investigation by the Board of Licensure in Medicine, which initiated disciplinary proceedings against her.

[¶3] Michalowski entered into a consent agreement with the Board in April 2007, in which she admitted that she had inappropriately obtained narcotic prescriptions from multiple providers over a two-year period and that this constituted unprofessional conduct and grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(F) (2011). The consent agreement included five years of license probation, required that she obtain prescriptions from a single primary care physician and a single pharmacy, and authorized the Board to monitor her medical practice and use of prescriptions. Michalowski acknowledged in the consent agreement that her failure to comply with its terms would constitute grounds for additional disciplinary action pursuant to 10 M.R.S. § 8003(5).

[¶4] In violation of that agreement, between July 2007 and July 2008, Michalowski wrote over seventy-five prescriptions for narcotics listing a neighbor as the patient, without the neighbor's knowledge. Purporting to be her neighbor,

Michalowski purchased these prescriptions from Canadian pharmacies for her own use. During this period, Michalowski crossed the Canadian border over one hundred times at six different crossings and obtained over six thousand narcotic tablets from seven different pharmacies. After the Board learned of her conduct, Michalowski entered into an interim consent agreement with the Board in September 2008, in which she agreed to a temporary suspension of her medical license until the Board took final disciplinary action.

[¶5] In September 2008, the Board initiated an administrative complaint against Michalowski, listing the following grounds for discipline: habitual substance abuse, 32 M.R.S. § 3282-A(2)(B) (2011); unprofessional conduct, 32 M.R.S. § 3282-A(2)(F); and failure to comply with the terms of probation, 10 M.R.S. § 8003(5)(A-1)(4). Michalowski responded to the complaint in July 2009, acknowledging that she had become addicted to her pain medications, detailing her treatment efforts, and contesting some facts that the Board had included in a proposed consent agreement, but not contesting or denying the allegations regarding the Canadian prescriptions.

[¶6] On April 13 and July 13, 2010, the Board conducted a disciplinary hearing. On the day before the second day of the hearing, Michalowski filed a motion to dismiss the proceeding, alleging that bias by Board members violated her right to due process and that the Board lacked jurisdiction to hold the hearing

because its governing statute, 32 M.R.S. §§ 3263 to 3300-B (2011), required it to proceed by filing a complaint in the District Court. Following oral argument by counsel, the hearing officer denied the motion.

[¶7] Michalowski did not appear for the second day of the hearing, explaining that she chose not to attend because she had nothing further to offer. Although Michalowski's attorney was present, he did not cross-examine witnesses but did present a written closing statement prepared by Michalowski. The Board issued a written order on September 14, which contained extensive findings and determined that Michalowski had violated provisions of 32 M.R.S. § 3282-A(2) and 10 M.R.S. § 8003(5). The order revoked Michalowski's medical license and required her to pay up to \$14,000 in costs for the hearing, as well as transcription costs.

[¶8] Michalowski filed a petition for review and complaint for relief in the Superior Court in October 2010. The complaint included an appeal of the Board's order pursuant to the provisions for judicial review of final agency action in the Administrative Procedure Act, 5 M.R.S. §§ 11001-11008 (2011), and M.R. Civ. P. 80C, alleging bias by the Board, due process violations, and that the Board lacked statutory authority to revoke her license. Michalowski also alleged a cause of action for her constitutional claims pursuant to 42 U.S.C.S. § 1983.

[¶9] The court dismissed the M.R. Civ. P. 80C appeal for lack of subject matter jurisdiction, concluding that the District Court has exclusive jurisdiction to review nonconsensual license-revocation orders pursuant to 10 M.R.S. § 8003(5) because the Board acted pursuant to the authority granted by that section. For the same reason, the court dismissed the section 1983 claim, also finding that the Board members have quasi-judicial immunity.

II. LEGAL ANALYSIS

[¶10] On appeal, Michalowski contests the Superior Court's dismissal of her action, challenging (A) the Superior Court's determination that it did not have jurisdiction to review the Board's action, and (B) the court's dismissal of the section 1983 claim. We address each issue in turn.

A. The Superior Court's Jurisdiction to Hear Appeals of Board Revocation Orders

[¶11] The issue of whether the Superior Court had subject matter jurisdiction to review the Board's revocation of Michalowski's medical license turns, in part, on whether the Board had the authority to revoke her medical license pursuant to 10 M.R.S. § 8003(5) in the first place, or whether the Board was instead required to file a complaint in the District Court pursuant to 32 M.R.S. § 3282-A. Accordingly, we address (1) the Board's statutory authority to revoke a medical license as the first step in our jurisdictional analysis, followed by (2) an

examination of the relevant jurisdictional statutes. We review questions of statutory interpretation and subject matter jurisdiction de novo. *See Tomer v. Me. Human Rights Comm'n*, 2008 ME 190, ¶ 9, 962 A.2d 335; *Tolliver v. Dep't of Transp.*, 2008 ME 83, ¶ 11, 948 A.2d 1223.

1. The Board's Authority to Revoke a Medical License

[¶12] The extent of the Board's authority to revoke a medical license pursuant to 10 M.R.S. § 8003(5) is a question of first impression. As will soon become apparent to the reader, our task here is not simple, requiring that we apply several rules of statutory construction to construe two related, but seemingly contradictory, statutes—10 M.R.S. § 8003(5)(A-1)(2-A)¹ and 32 M.R.S. § 3282-A(1)(D).² We employ a three-part analysis to construe these statutes. We

¹ Title 10 M.R.S. § 8003(5) (2011) provides, in relevant part:

5. Authority of bureaus, offices, boards or commissions. In addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law, each bureau, office, licensing board and commission within or affiliated with the department may take one or more of the following actions

A-1. For each violation of applicable laws, rules or conditions of licensure or registration, the bureau, office, board or commission may take one or more of the following actions.

. . . .

(2-A) Revoke a license or registration

² The relevant provisions of 32 M.R.S. § 3282-A (2011) provide:

If the [B]oard [of Licensure in Medicine] finds that the factual basis of [a] complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it determines appropriate.

begin with the familiar rule of construction that directs us to (a) “look first to the plain language of the statute to discern the Legislature’s intent.” *Tolliver*, 2008 ME 83, ¶ 11, 948 A.2d 1223. Where, as here, two statutes deal with the same subject matter, we also (b) look at the plain language of both through an additional lens by which the two statutes are construed in harmony with each other, if possible. *See Butler v. Killoran*, 1998 ME 147, ¶ 11, 714 A.2d 129. If harmony cannot be achieved, we then (c) apply the rule of statutory construction that “a statute dealing with a subject specifically prevails over another statute dealing with the same subject generally . . . *unless* it appears that the [L]egislature intended to make the general [statute] controlling.” *Id.* (emphasis added) (quotation marks omitted).

a. Plain Meaning

[¶13] As we have previously discussed, “most professional conduct . . . is governed by two sets of statutes.” *Zumbach v. Bd. of Real Estate Appraisers*, 2011 ME 31, ¶ 6, 15 A.3d 741. Here, 10 M.R.S. §§ 8001-8009 (2011)³ “governs

....

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the District Court in accordance with Title 4, chapter 5.

³ Title 10 M.R.S. §§ 8001-8009 (2011) has been amended since this action began; however, the amendments are not relevant to this appeal. *See, e.g.*, P.L. 2011, ch. 286, B-2 (effective Sept. 28, 2011).

the practice of professional conduct in general.” *Zumbach*, 2011 ME 31, ¶ 6, 15 A.3d 741. That statute specifically includes the Board of Licensure in Medicine within its reach, and grants certain enumerated powers to it. *See* 10 M.R.S. §§ 8001-A(4), 8003(5). Additionally, the Board has its own governing statute, 32 M.R.S. §§ 3263 to 3300-B.⁴

[¶14] Title 10 M.R.S. § 8003(5) provides that “[i]n addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law,” a licensing board may “[r]evoke a license or registration.” 10 M.R.S. § 8003(5)(A-1)(2-A). Further, a licensing board’s “jurisdiction to suspend and revoke occupational and professional licenses . . . is concurrent with that of the District Court.” *Id.* § 8003(5). Thus, the Board of Licensure in Medicine has authority to revoke a professional license pursuant to 10 M.R.S. § 8003(5)(A-1)(2-A), concurrent with the District Court, “unless expressly precluded by language of denial” found in the Board’s governing statute, 32 M.R.S. §§ 3263 to 3300-B. *See* 10 M.R.S. § 8003(5).

[¶15] The Board’s governing statute provides that after an investigation regarding a complaint against a medical licensee, “[i]f the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further

⁴ Title 32 M.R.S. §§ 3263 to 3300-B (2011) has since been amended; however, the amendments are not relevant to this appeal. *See e.g.*, P.L. 2011, ch. 477, § J-1 (effective Feb. 23, 2012) (to be codified at 32 M.R.S. § 3300-C).

action, it may take any of the following actions it determines appropriate.” 32 M.R.S. § 3282-A(1). One of the authorized actions is that “[i]f the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the District Court” *Id.* § 3282-A(1)(D). The Board’s governing statute contains no explicit reference to the revocation authority conferred by 10 M.R.S. § 8003(5)(A-1)(2-A). *See* 32 M.R.S. §§ 3263 to 3300-B.

[¶16] At first blush, the plain language of the relevant provisions of Title 10 and Title 32 regarding the Board’s revocation authority appear to be in direct conflict. The general revocation authority pursuant to 10 M.R.S. § 8003(5)(A-1)(2-A) provides various licensing entities—including the Board of Licensure in Medicine—with the authority to revoke a license “unless expressly precluded by language of denial” in the entity’s corresponding governing statute. In contrast, the specific revocation provision found at 32 M.R.S. § 3282-A(1)(D) mandates that the Board “shall” file a complaint for revocation in the District Court. This leads us to consider if the plain language of these apparently contradictory provisions can be harmonized.

- b. Harmonizing 10 M.R.S. § 8003(5)(A-1)(2-A) and 32 M.R.S. § 3282-A(1)(D)

[¶17] Michalowski suggests one possible way of harmonizing the two statutes. If the directive found in 32 M.R.S. § 3282-A(1)(D)—that “the board shall

file a complaint in the District Court”—constitutes “express[] preclu[sion] by language of denial” for purposes of 10 M.R.S. § 8003(5), then the governing statute’s revocation procedure in Title 32 operates as a rejection of the broader powers granted by the general revocation provision in Title 10. To determine whether this harmonization is feasible, we must construe the operative phrase, “expressly precluded by language of denial.”

[¶18] The meaning of “preclude” includes to “obviate by anticipation.” Webster’s Third New International Dictionary 1785 (Philip Babcock Gove, ed., 2002). The word “denial” embraces a “refusal to . . . assent to, or sanction,” or a “rejection of something.” *Id.* at 602. Thus, for the exception to 10 M.R.S. § 8003(5)(A-1)(2-A)’s general revocation provision to apply, the Board’s governing statute in Title 32 must include language that expressly anticipates and rejects the revocation authority granted in Title 10. *See Harriman v. Comm’r, Dep’t of Human Servs.*, 595 A.2d 1053, 1056 (Me. 1991) (“In the absence of a contrary statutory definition, it is the everyday usage of those words that must control their meanings within the statute.”).

[¶19] The Board’s governing statute in Title 32 contains no such language. The statute provides that the Board “may” take an array of possible actions in response to a disciplinary complaint, including that the Board “shall” file a complaint for revocation in the District Court if it concludes that a license

suspension or revocation is in order. 32 M.R.S. § 3282-A(1)(D). This constitutes a mandate that the Board affirmatively act in a certain way, but only if it first decides that a suspension or revocation is in order. *See* 1 M.R.S. § 71(9-A) (2011) (defining “shall” as “a mandatory duty, action or requirement”).⁵ However, an affirmative mandate to act in one manner cannot simultaneously be an *express rejection* of a second power to act in a different manner; at most, such a mandate is an *implicit rejection* of the second power. This conclusion is consistent with the view that the Legislature’s use of “shall” to make a certain action by an administrative board mandatory does not preclude that board from taking other actions authorized by other statutory provisions.

[¶20] We adopted this view in *Senty v. Board of Osteopathic Examination & Registration*, 594 A.2d 1068, 1070 (Me. 1991), where we determined that the Legislature’s use of the word “shall” to mandate that the Board of Osteopathic Examination and Registration grant a professional license if certain conditions are met did not preclude that Board from denying a license based on authority granted by other statutory provisions. The same principle applies here. The Legislature’s use of “shall” in describing the revocation procedure in the Board’s governing

⁵ This definition only “applies to laws enacted or language changed by amendment after December 1, 1989.” 1 M.R.S. § 71(9-A) (2011). Although the Legislature enacted the operative provision of section 3282-A in 1983, *see* P.L. 1983, ch. 378, § 53 (effective Sept. 23, 1983), it has since amended the relevant language, *see, e.g.*, P.L. 1999, ch. 547, § B-67 (effective March 9, 2000), thereby making section 3282-A(1)(D) subject to 1 M.R.S. § 71(9-A).

statute in Title 32 does not preclude the Board from exercising authority the Legislature separately conferred upon the Board pursuant to the revocation authority found in Title 10.

[¶21] Thus, although the language contained in Title 32 affirmatively directs the Board to file a complaint in the District Court, Title 32 does not include express language anticipating and rejecting the authority that Title 10 confers on the Board. Accordingly, the Board's governing statute does not disavow the authority provided to the Board by Title 10, and the two statutes cannot be harmonized in the manner Michalowski asserts.

- c. The Rule that the More Specific Law Takes Precedence Over the More General Law Unless the Legislature Intended Otherwise

[¶22] Our inquiry does not end with our conclusion that the two statutes cannot be harmonized in the manner Michalowski contends. Even though 32 M.R.S. § 3282-A(1)(D) does not contain language of denial expressly precluding the Board's general revocation authority established in 10 M.R.S. § 8003(5)(A-1)(2-A), we must still consider whether the governing statute's specific revocation procedure should take precedence over the general revocation authority.

[¶23] As a general rule of statutory construction, a specific provision will control a more general provision "unless it appears that the [L]egislature intended

to make the general act controlling.” See *Butler*, 1998 ME 147, ¶ 11, 714 A.2d 129 (quotation marks omitted). However, that rule of construction generally applies where two discordant statutes are like two ships passing in the dark of night, completely oblivious to the possible presence of the other. That is not the case here. Title 10’s grant of general revocation authority contains language indicating a full awareness of the possibility that a board’s governing statute will reject that authority. Yet the Title 32 governing statute does not recognize the existence of the general revocation authority found in Title 10. In such a scenario, mechanical application of the canon that “the specific takes precedence over the general” would be akin to following the ship that is oblivious to the presence of the other, rather than following the ship that is alert to the possible existence of the first vessel.

[¶24] Review of the relevant legislative record bolsters the view that, here, we should not mechanically treat the specific statute as taking precedence over the more general statute.⁶ The history of section 8003(5) indicates that the Legislature specifically intended its enactment of the statute to empower the Board of Licensure in Medicine to revoke medical licenses by administrative action. The

⁶ Only if a statute is ambiguous do we “look beyond the plain language of the statute and the context of the whole statutory scheme to indicia of legislative intent such as the statute’s history and its underlying policy.” *HL 1, LLC v. Riverwalk, LLC*, 2011 ME 29, ¶ 17, 15 A.3d 725. In this case, the conflicting provisions of the general revocation provision and the governing statute revocation procedure give rise to such an ambiguity.

bill that added the general revocation authority to 10 M.R.S. § 8003(5) was an initiative of the Department of Professional and Financial Regulation. *See* L.D. 487 (120th Legis. 2001). The Commissioner of the Department submitted written testimony, noting that the “proposal is not radical” and that “at least 25 State Medical Boards have the authority to revoke physician licenses, but Maine’s board does not.” *Hearing on L.D. 487 Before the H. Comm. on Bus. & Econ. Dev.*, 120th Legis. (2001) (statement of S. Catherine Longley, Commissioner). Her statement reflects her understanding that the legislation proposed by the Department was intended to grant the Board of Licensure in Medicine the authority to revoke medical licenses—authority that it did not then have under its governing statute, 32 M.R.S. §§ 3263 to 3300-B.

[¶25] The language of the pertinent statutes and the relevant legislative history lead us to conclude that the Board has the authority to revoke a medical license pursuant to 10 M.R.S. § 8003(5)(A-1)(2-A). The Board may proceed by either undertaking its own administrative revocation proceeding pursuant to Title 10, as occurred here, or by filing a petition in the District Court seeking a judicial revocation pursuant to Title 32. These alternative paths are complementary and, understood in that light, do not conflict. Having clarified the source of the Board’s authority to revoke Michalowski’s medical license, we examine the corresponding jurisdictional statutes as the second step in determining whether the Superior Court

has jurisdiction to review the Board's decision revoking Michalowski's medical license.

2. The Relevant Jurisdictional Statutes

[¶26] The Superior Court has jurisdiction to review actions taken by an agency—including the Board of Licensure in Medicine—to amend, revoke, or otherwise affect any license under the circumstances specified in 5 M.R.S. §§ 10001-10005 (2011) of the Administrative Procedure Act. *See* 5 M.R.S. §§ 11001, 11002; *Nicholson v. Bd. of Licensure in Med.*, 2007 ME 141, ¶¶ 6-7, 935 A.2d 660; *see also* M.R. Civ. P. 80C (governing review of final agency actions). However, the Superior Court properly characterized the Board's action to revoke Michalowski's license as taken pursuant to the general revocation provision, 10 M.R.S. § 8003(5)(A-1)(2-A), and neither 32 M.R.S. § 3282-A(1)(D) nor 5 M.R.S. §§ 10001-10005 provided the authority to revoke Michalowski's license.⁷ Therefore, our review of the Superior Court's determination that it lacked

⁷ Title 5 M.R.S. §§ 10001 and 10003 (2011) generally provide for notice and the right to be heard in licensing adjudicatory proceedings, in accordance with the strictures of 5 M.R.S. §§ 9051-9064, 10051 (2011), where licensing is required as a matter of constitutional right or by statute. Title 5 M.R.S. § 10004 (2011) confers on licensing entities the authority to revoke a license without conforming to 5 M.R.S. §§ 9051-9064 and 10051 in several specific situations, including where "[t]he decision to [revoke] rests solely upon a finding or conviction in court of any violation which by statute is expressly made grounds for revocation." 5 M.R.S. § 10004(1). The Board did not revoke Michalowski's license on the grounds provided by 5 M.R.S. § 10004(1), and the procedure for judicial review set forth in 5 M.R.S. §§ 11001 and 11002 (2011) does not govern the Board's action in this case. *See* 10 M.R.S. § 8003(5).

jurisdiction over Michalowski's petition for review begins with an examination of 10 M.R.S. § 8003(5).

[¶27] Section 8003(5) generally provides for review of licensing board disciplinary actions in the Superior Court. *See* 10 M.R.S. § 8003(5). However, an exception exists for revocation actions: "Any nonconsensual revocation of an occupational or professional license taken under authority of [8003(5)] is subject to . . . de novo judicial review exclusively in District Court." 10 M.R.S. § 8003(5).⁸ Additionally, the statute granting jurisdiction to the District Court provides it with exclusive jurisdiction in certain licensing proceedings, but excepts proceedings pursuant to section 8003 from that exclusive jurisdiction. *See* 4 M.R.S. § 152(9) (2011).⁹ The apparent purpose of this language in the District Court's

⁸ The relevant portion of 10 M.R.S. § 8003(5) provides:

The jurisdiction to suspend and revoke occupational and professional licenses conferred by this subsection is concurrent with that of the District Court. Civil penalties must be paid to the Treasurer of State.

Any nonconsensual disciplinary action taken under authority of this subsection may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and, except for revocation actions, is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

Any nonconsensual revocation of an occupational or professional license taken under authority of this subsection is subject to, upon appeal within the time frames provided in Title 5, section 11002, subsection 3, de novo judicial review exclusively in District Court. Rules adopted to govern judicial appeals from agency action apply to cases brought under this section.

⁹ In relevant part, 4 M.R.S. § 152(9) (2011) provides the District Court with jurisdiction over certain licensing matters:

jurisdictional statute is to accommodate the split authority provided by section 8003(5) for either the Superior or District Court to review Board decisions, depending on whether that decision involves the “nonconsensual revocation” of a license. Consistent with that reading, the plain language of section 8003(5) unequivocally provides exclusive jurisdiction in District Court for de novo review of nonconsensual revocations.

[¶28] Nonetheless, Michalowski argues that because her 42 U.S.C.S. § 1983 claim may merit a jury trial, she “cannot be compelled to pursue her claims in . . . District Court.” We disagree. The mere possibility that one claim in a multi-claim action may lead to a jury trial for money damages does not confer jurisdiction on the Superior Court over a subject for which the Legislature has granted exclusive jurisdiction to the District Court. *See* 10 M.R.S. § 8003(5); *see also* 4 M.R.S. § 152(2) (2011) (providing the District Court with concurrent jurisdiction to hear civil claims for money damages when no equitable relief is demanded). As such,

9. Licensing jurisdiction. Except as provided in Title 5, section 10004; Title 8, section 279-B; Title 10, section 8003; Title 20-A, sections 10712 and 10713; Title 29-A; Title 32, chapters 2-B, 114 and 135; and Title 35-A, section 3132, exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency. The District Court has original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused. The District Court has original concurrent jurisdiction to grant equitable relief in proceedings initiated by an agency or the Department of the Attorney General alleging any violation of a license or licensing laws or rules.

(footnote omitted).

the Superior Court properly dismissed Michalowski's petition for review of the Board order revoking her license because the District Court has exclusive jurisdiction in such matters pursuant to 10 M.R.S. § 8003(5).

B. Michalowski's Claim Pursuant to 42 U.S.C.S. § 1983

[¶29] Michalowski argues that the Superior Court erred in dismissing her section 1983 claim for damages, which was based on her assertion that the Board acted without authority in revoking her license, thus unlawfully depriving her of protected liberty and property interests under color of state law. Because we conclude that the Board acted within its authority in revoking her license and, on appeal, Michalowski does not otherwise assert a denial of her constitutional rights, her section 1983 claim was properly dismissed.¹⁰ See *Kane v. Comm'r of Dep't of Health and Human Servs.*, 2008 ME 185, ¶ 30 n.4, 960 A.2d 1196 ("To formulate a cognizable section 1983 claim [for a due process violation], a plaintiff must allege that the state deprived him or her of a protected liberty or property interest without due process of law.").

¹⁰ Thus, we do not reach Michalowski's argument that the court erred in determining that the Board was immune from suit. Moreover, although Michalowski's brief includes factual statements implying Board bias against her, she does not pursue this argument in the issues presented or argument sections of her brief, and therefore she waives any argument under section 1983 for violation of her due process rights based on bias or other Board misconduct. See *Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290 (arguments not developed in the appellate brief and only addressed in a perfunctory manner are waived).

The entry is:

Judgment affirmed.

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